Award No. 2322
Docket No. 2038
2-T&P-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the supplying of material to carmen at cars, either directly from store department or platforms, containers, or stock piles located outside store department proper, is the work of carmen helpers under the current agreement.

2. That the carrier violated the current agreement, when on November 10, 1950, December 6, 1950, and February 12, 1951, it assigned electrician helpers to operate Baker Kran-Kar at Lancaster Car Shop, Fort Worth, Texas, in connection with delivering material to car undergoing repairs.

3. That in consideration of the aforesaid violation, the carrier be ordered to additionally compensate Carmen Helpers O. Krupka, A. E. Simpson, and J. D. Dodd, at the time and one-half rate for 72, 104 and 72 hours respectively.

EMPLOYES' STATEMENT OF FACTS: Under date of August 22, 1950 the following bulletin was posted in the roundhouse, machine shop, coach yard and hostlers room at the carrier's Lancaster Shops, Fort Worth, Texas.

"Ft. Worth, August 22, 1950

ELECTRICIAN HELPER BULLETIN NO. 111

Bids will be received in this office for a period of five days closing at 12 Noon, August 26, 1950 for the following job:

One Electrician Helper, Car Department, 1st shift 7:30 A. M. to 4:00 P. M. (Operating Crane) five days per week, rest days Saturday and Sunday.

(SIGNED) A. C. Bjork
General Foreman."

Under date of August 25, 1950, the following bulletin was posted at the above named places at the Lancaster Shops.

they contended that an employe other than a boilermaker was performing work on flues in front end of engines at North Little Rock, Arkansas, in violation of their rule and that such practice should be discontinued. The Board in this case denied the claim on the grounds that the work complained of was merely to pass the flues through superheater flue hole and leave them at the places where they were to be installed by boilermakers. It is here pointed out that this award is certainly controlling in the instant case in that the work here complained of consisted of an electric crane being operated by an electrician helper solely for the purpose of lifting material and putting it in position to be placed on the car by the carmen. It was not a case of bringing material to the point where it was to be used. This action did not displace any carmen employed at the point this work was being done.

AWARD No. 412 of this Division, without assistance of a referee, decided that the work in question should be performed by claimant craft, but under circumstances involved, compensation was denied.

AWARD No. 460 of this Division is similar to above award (412).

AWARD No. 1104 of this Division is a case in which the Board ruled that the work in question should be performed by claimant craft, but under the circumstances involved similar to those in the instant case, claim for compensation was denied.

From the above, it can clearly be seen that the circumstances in the instant case are such that the claim for compensation should be denied even in the event the Board assumes jurisdiction in this dispute and in the event the Board should decide that the carmen helpers should perform this type of service.

We do not believe that the Board will assume jurisdiction of this dispute to any greater extent than to remand it for settlement between the two organizations concerned, in line with the several awards which we have quoted. Further, we assert that if the Board should assume jurisdiction, the claim is without merit and should be denied, and the carrier so requests.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

On August 22, 1950, carrier bulletined one electrician helper position in the car department, Lancaster Shops, Fort Worth, Texas, to perform work described as crane operator. On November 10, 1950, the successful bidder on this position was assigned to supply material to carmen at cars such as side doors, couplers, draft gears, truck bolsters, wheels, etc. The organization contends that this and similar assignments are in violation of Rule 82, carmen helpers' current agreement which defines the work of carmen helpers in part as follows:

> "* * * *, the supplying of material to carmen at cars, either directly from the store department or from platforms, bins, containers, or stockpiles, located outside store department proper. * * * *."

The carrier asserts that the work of operating portable cranes of less than 15 tons capacity belongs to electrical helpers under Rule 75, electrical

workers' agreement which defines the work of electrical worker helpers in part as follows:

"* * * operating of portable cranes 15 tons and under; * * *."

It is plain therefore that each craft claims a contract right to the work. This ordinarily does not create a jurisdictional dispute. It is only where work is claimed by more than one craft and no craft has a contract right to perform it that a jurisdictional dispute arises. Award 4828, Third Division. Ordinarily, therefore, we would here be concerned only with the rights of carmen under Rule 82, carmen's current agreement. A jurisdictional question ordinarily does not arise when the carrier has contracted the same work to more than one craft. Its remedy in such a situation is to service notice of cancellation of one or both of the conflicting sections under the provisions of Section 6 of the Railway Labor Act and proceed to renegotiate or mediate the question.

In the present case, the parties entered into a special letter agreement bearing the date of March 8, 1940, which provides in substance as follows:

> That effective with the date of agreement, no representative or member of any of the organizations signatory thereto, will request management to take work from one craft and give it to another; that the organizations involved will find a way and reach an agreement and settle any dispute that may arise involving jurisdiction of work, and submit the same to management; when disagreement arises between two or more crafts, the craft performing the work when the work arose will continue to do it even if there is a change of process or a change in equipment or tools; and, finally, that the purpose of the agreement is to eliminate as promptly as possible any and all friction that may result from jurisdictional disputes between the signatory organizations.

In the present case, the carrier stands ready to assign the work to either craft if they will determine the question in accordance with the foregoing letter agreement. The carmen's organization takes the position that there is no jurisdictional question involved and insists upon the application of Rule 82. In this, the carmen's organization is in error. The letter agreement covers more than strictly jurisdictional disputes. It covers the taking of work from one craft and giving it to another, any dispute that may arise involving jurisdiction of work, and the maintenance of the status quo until the contending crafts reach an agreement. The over-all purpose is to eliminate all friction that may result from jurisdiction of work disputes between the signatory organizations. It was clearly the intention of the agreement as gleaned from its four corners that all disputes between the signatory crafts involving work claimed by both, whether based on contractual provisions or a want thereof, would be settled by the contending organizations. If this were not so, there would have been no reason for the provision that members or representatives of an organization would not request management to take work from one craft and give it to another even though justified by contract provisions and for the maintenance of the status quo during the settlement of a dispute by the contending crafts irrespective of claimed contractual rights.

In the interpretation of an agreement, it must be examined within its four corners to determine the intent of the parties. The general meaning of the word "jurisdiction," as used in railroad parlance, is "sphere of authority." Consequently, an agreement, such as we have before us, deals with matters involving the right of a craft to perform work. It involves more than the term "jurisdictional dispute" as that term is strictly used in the field of labor relations. We necessarily conclude that a dispute "involving jurisdiction of work," such as we have here, was within the contemplation of the parties when they entered into the letter agreement of March 8, 1940.

The foregoing letter agreement was prepared by the signatory organizations and executed by them. The carrier was requested to accept it which it

did by a letter bearing date of March 12, 1940. The carrier stands ready to accept a decision of the contending organizations. It was a plan drafted and submitted by the organizations. The carrier might subject itself to penalties if it failed to comply with it. The carrier is fully jusified in maintaining the status quo until the organizations determine the dispute among themselves and submit their decision to the carrier, and we so hold. Consequently, the appeal to this Board is premature. The appeal must be dismissed for that reason.

AWARD

Appeal dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2322

The majority correctly states that "It is only where work is claimed by more than one craft and no craft has a contract right to perform it that a jurisdictional dispute arises," but in spite of the fact that carmen helpers have a contract right to perform the work described herein the majority attempts to make the instant dispute into a jurisdictional dispute.

Even though this is not a jurisdictional dispute it seems advisable to call attention to the fact that had it been one the majority has misapplied the letter agreement of March 8, 1940. While the majority agrees that that agreement provides that the craft performing the work when a dispute arises will continue to do the work even if there is a change in equipment or tools, the majority overlooks the fact that carmen helpers had been performing the instant work and, in order to maintain the status quo, should have continued to do the work.

The majority in stating that "The carrier is fully justified in maintaining the status quo until the organizations determine the dispute among themselves and submit their decision to the carrier," overlooks several things: first, the carrier did not maintain the status quo, as it agreed to do in its letter of March 12, 1940, when it assigned the instant work to other than carmen helpers and, second, since this is not a jurisdictional dispute it does not come within the letter agreement of March 8, 1940 and the appeal to this Board is therefore not premature. The claim should not have been dismissed but sustained and we are thus constrained to dissent from the findings and award of the majority.

George Wright
C. E. Goodlin
T. E. Losey
Edward W. Wiesner